IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.1584 OF 1990

Schokhi Industries Pvt. Ltd. ..Plaintiffs.
Vs.
M/s. John F.Fidele and Co. ..Defendants.

Ms. D. Jahangir for the Plaintiffs.

CORAM : A.M.KHANWILKAR, J.
DATE : 25th October, 2007.

P.C.

1. None appears for the defendants though served,. No written statement has been filed on behalf of the defendants. The matter pertains to year 1990, filed as summary suit. The defendants were granted leave to defend the present suit on condition that they would deposit the suit amount. The defendants have not chosen to deposit the said amount so far.

2. Be that as it may, the suit brought before this court is for recovery of amount of Rs.35,000/- from the defendants on account of advance given to the defendants in the sum of Rs.4,00,000/-. The defendant repaid part of the amount. However, on the date when the suit came to be filed the defendants were still in arrears in the sum of Rs.1,10,303/- which position is reflected in the

in the books of account maintained by the plaintiff in the ordinary course of business. The fact that the defendants availed of the advance is established from the encashment of the cheque given by the plaintiff. The defendants later on repaid part of the amount by admitting the liability of repayment of the advance amount. As the defendants failed to pay the balance amount the plaintiff reminded the defendants from time to time, unsuccessfully, lastly by legal notice dated 21.2.1990. As the amount remained unpaid, the plaintiffs instituted the present suit on 19.4.1990.

3. As mentioned earlier, during the pendency of the present summary suit, the plaintiffs had taken out Summons for Judgment in which the defendants were granted leave to defend provided they would deposit Rs.35,000/- out of the suit amount within specified time. The defendants have not paid that amount so far. Besides, the defendants have not chosen to appear before this court though served nor have filed their written statement. On the other hand, the plaintiffs have filed affidavit of Director of the company sworn on 15.10.2007, reiterating the factual position stated in the plaint. Besides filing of affidavit of evidence in lieu of examination-in-chief, the plaintiffs are relying on the original documents, the compilation of which is filed on 15.10.2007. The compilation consists of

correspondence exchanged between the parties.

4. Having regard to the material on record, I have no hesitation in accepting the claim of the plaintiffs that the defendants are liable to pay the suit claim amount of Rs.1,10,303/-. However, in so far as claim of interest is concerned, there is nothing on record to indicate that the interest for the default or delayed payment was agreed as 21% p.a. with quarterly rest. The counsel for the plaintiffs has relied on Advocate's notice sent to the defendants' Advocate given on behalf of the defendants on 29.3.1989. At the end of Paragraph-1 of the said reply, it is stated that it is true that your clients (plaintiffs) are charging interest at the rate of 21% p.a. but it is not correct and my clients (defendants) deny that the said loan was advanced for specific condition that my clients (defendants) will repay the said loan within a period of 15 days from 12.6.1987. Relying on this assertion, the counsel for the plaintiffs submits that the defendants have accepted the liability to pay the interest at the rate of 21% p.a. It is not possible to accept this submission as there is no written agreement between the parties regarding the rate of interest. If the plaintiffs are demanding interest at the rate of 21% unilaterally that does not mean that it is agreed rate of interest. In the circumstances, in so far as

interest component is concerned, in my opinion, as the transaction between the parties was to extend financial facility to the defendants, the plaintiffs will be entitled to interest at the reasonable rate of 10% per annum.

5. Accordingly, in exercise of powers under Order VIII Rule 10 of the Code of Civil Procedure the suit is decreed in the following terms:

a) That the defendants are ordered and decreed to pay a sum of Rs.1,10,303/- alongwith interest thereon at the rate of 10% p.a. with quarterly rest from 2.1.1990 till repayment and/or realization.

b) The plaintiffs are also entitled for costs of the present suit.

c) Decree be drawn up accordingly.

(A.M. KHANWILKAR, J.)